



A-201-842  
Sunset Review  
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MEMORANDUM TO: Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder  
Associate Deputy Assistant Secretary  
for Antidumping and Countervailing Duty  
performing the duties of Deputy Assistant Secretary  
for Antidumping and Countervailing Duty

SUBJECT: Issues and Decision Memorandum for the Final Results of First  
Sunset Review of the Antidumping Duty Order on Large  
Residential Washers from Mexico

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### Summary

We have analyzed the response of the interested party in the first sunset review of the antidumping duty (AD) order on large residential washers from Mexico. We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this sunset review for which we received a substantive response:

1. Likelihood of continuation or recurrence of dumping
2. Magnitude of the dumping margins likely to prevail

### Background

On January 2, 2018, the Department of Commerce (Commerce) initiated the first sunset review of the antidumping duty order on large residential washers from Mexico, in accordance with section 751(c) of the Tariff Act of 1930, as amended (the Act).<sup>1</sup> Commerce received a notice of intent to participate from Whirlpool Corporation (Whirlpool), within the deadline specified in 19

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<sup>1</sup> See *Initiation of Five-Year (Sunset) Review*, 83 FR 100 (January 2, 2018) (*Initiation*).

CFR 351.218(d)(1)(i).<sup>2</sup> Whirlpool claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of large residential washers.

Commerce exercised its discretion to toll all deadlines affected by the closure of the Federal Government from January 20 through January 22, 2018. As a result, the revised deadline for the results of this review is now May 7, 2018.<sup>3</sup>

Commerce received a substantive response from Whirlpool<sup>4</sup> within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from respondent interested parties with respect to the order covered by this sunset review.

On February 23, 2018, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from respondent interested parties.<sup>5</sup> As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of the antidumping duty order on large residential washers from Mexico.

### History of the Order

On December 27, 2012, Commerce published its final affirmative determination of sales at less than fair value in the *Federal Register* with respect to large residential washers from Mexico finding weighted-average dumping margins ranging from 36.52 percent to 72.41 percent.<sup>6</sup> Following the issuance of Commerce's final determination, the ITC found that the U.S. industry was materially injured by reason of the subject imports.<sup>7</sup> On February 15, 2013, Commerce published its antidumping duty order on large residential washers from Mexico in the *Federal Register*.<sup>8</sup> Commerce has completed four administrative reviews since the issuance of the *Order*.<sup>9</sup> Electrolux filed an appeal of the final results of the fourth review with NAFTA. That

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<sup>2</sup> See Whirlpool Letter, "Five-Year ("Sunset") Review of Antidumping and Countervailing Duty Orders on Large Residential Washers from Mexico and the Republic of Korea: Notice of Intent to Participate," dated January 17, 2018.

<sup>3</sup> See Memorandum, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by three days.

<sup>4</sup> See Whirlpool Letter, "Five-Year ("Sunset") Review of Antidumping Duty Order on Large Residential Washers from Mexico: Substantive Response of Whirlpool Corporation to the Notice of Initiation of First Sunset Review," dated February 5, 2018 (Whirlpool Substantive Response).

<sup>5</sup> See Commerce Letter re: Sunset Reviews Initiated on January 2, 2018, dated February 23, 2018.

<sup>6</sup> See *Notice of Final Determination of Sales at Less Than Fair Value: Large Residential Washers from Mexico*, 77 FR 76288 (December 27, 2012) (*Final Determination*).

<sup>7</sup> See *Certain Large Residential Washers from Korea and Mexico*, Inv. Nos. 701-TA-488 and 731-TA-1199-1200 (Final), U.S. ITC Pub. 4378 (February 2013).

<sup>8</sup> See *Large Residential Washers from Mexico and the Republic of Korea: Antidumping Duty Orders*, 78 FR 11148 (February 15, 2013) (*Order*). Consistent with the *Final Determination*, we applied the following weighted-average dumping margins for the three mandatory respondents, two of which were based entirely on adverse facts available: 1) Electrolux Home Products Corp. NV/Electrolux Home Products de Mexico, S.A. de C.V. (Electrolux), 36.52 percent; 2) Samsung Electronics Mexico S.A. de C.V. (Samsung), 72.41 percent; and 3) Whirlpool International S. de R.L., 72.41 percent. The All Others dumping margin was established as 36.52 percent. *Id.* at 11150.

<sup>9</sup> See *Large Residential Washers from Mexico: Final Results of the Antidumping Duty Administrative Review; 2012–2014*, 80 FR 55335 (September 15, 2015), as amended, *Large Residential Washers from Mexico: Amended Final Results of the Antidumping Duty Administrative Review; 2012–2014*, 80 FR 68510 (November 5, 2015)

appeal is currently pending and Commerce has issued no correction to the margin as of the time of this sunset review.

On April 16, 2018, Commerce initiated the fifth administrative review of the period February 1, 2017, through January 31, 2018.<sup>10</sup> On March 22, 2018, we received a request from Whirlpool for a changed circumstances review for the purpose of partially revoking the *Order* with respect to large residential washers that meet all of the following conditions: (1) have a horizontal rotational axis; (2) are front loading; and (3) have a drive train consisting, *inter alia*, of (a) a controlled induction motor (CIM), and (b) a belt drive.<sup>11</sup> As of the issuance date of the results of this sunset review, we have not yet initiated this requested changed circumstances review. There have been no circumvention determinations concerning the *Order*. There have also been no scope rulings since the imposition of the *Order*.

### Scope of the Order

The products covered by the *Order* are all large residential washers and certain subassemblies thereof from Mexico.

For purposes of this *Order*, the term “large residential washers” denotes all automatic clothes washing machines, regardless of the orientation of the rotational axis, except as noted below, with a cabinet width (measured from its widest point) of at least 24.5 inches (62.23 cm) and no more than 32.0 inches (81.28 cm).

Also covered are certain subassemblies used in large residential washers, namely: (1) all assembled cabinets designed for use in large residential washers which incorporate, at a minimum: (a) at least three of the six cabinet surfaces; and (b) a bracket; (2) all assembled tubs<sup>12</sup> designed for use in large residential washers which incorporate, at a minimum: (a) a tub; and (b) a seal; (3) all assembled baskets<sup>13</sup> designed for use in large residential washers which incorporate, at a minimum: (a) a side wrapper;<sup>14</sup> (b) a base; and (c) a drive hub;<sup>15</sup> and (4) any combination of the foregoing subassemblies.

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(finding a margin of 6.22 percent for Electrolux) (*12/14 Review*); *Large Residential Washers from Mexico: Final Results of the Antidumping Duty Administrative Review; 2014–2015*, 81 FR 62714 (September 12, 2016) (finding a margin of 2.47 percent for Electrolux) (*14/15 Review*); *Large Residential Washers from Mexico: Final Results of Antidumping Duty Administrative Review; 2015–2016*, 82 FR 32169 (July 12, 2017) (finding a margin of 3.67 percent for Electrolux) (*15/16 Review*); and *Large Residential Washers from Mexico: Final Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 11963 (March 19, 2018) (finding a margin of 72.41 percent and duty absorption on all U.S. sales for Electrolux based on the application of adverse facts available) (*16/17 Review*).

<sup>10</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 16298 (April 16, 2018).

<sup>11</sup> See Whirlpool Letter, “Large Residential Washers from the Republic of Korea and Mexico: Request for Changed Circumstances Review,” dated March 22, 2018.

<sup>12</sup> A “tub” is the part of the washer designed to hold water.

<sup>13</sup> A “basket” (sometimes referred to as a “drum”) is the part of the washer designed to hold clothing or other fabrics.

<sup>14</sup> A “side wrapper” is the cylindrical part of the basket that actually holds the clothing or other fabrics.

<sup>15</sup> A “drive hub” is the hub at the center of the base that bears the load from the motor.

Excluded from the scope are stacked washer-dryers and commercial washers. The term “stacked washer-dryers” denotes distinct washing and drying machines that are built on a unitary frame and share a common console that controls both the washer and the dryer. The term “commercial washer” denotes an automatic-clothes washing machine designed for the “pay per use” market meeting either of the following two definitions:

(1) (a) it contains payment system electronics;<sup>16</sup> (b) it is configured with an externally mounted steel frame at least six inches high that is designed to house a coin/token operated payment system (whether or not the actual coin/token operated payment system is installed at the time of importation); (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners;<sup>17</sup> or

(2) (a) it contains payment system electronics; (b) the payment system electronics are enabled (whether or not the payment acceptance device has been installed at the time of importation) such that, in normal operation,<sup>18</sup> the unit cannot begin a wash cycle without first receiving a signal from a *bona fide* payment acceptance device such as an electronic credit card reader; (c) it contains a push button user interface with a maximum of six manually selectable wash cycle settings, with no ability of the end user to otherwise modify water temperature, water level, or spin speed for a selected wash cycle setting; and (d) the console containing the user interface is made of steel and is assembled with security fasteners.

Also excluded from the scope are automatic clothes washing machines with a vertical rotational axis and a rated capacity of less than 3.7 cubic feet, as certified to the U.S. Department of Energy pursuant to 10 CFR 429.12 and 10 CFR 429.20, and in accordance with the test procedures established in 10 CFR Part 430.

The products subject to this *Order* are currently classifiable under subheadings 8450.20.0040 and 8450.20.0080 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this *Order* may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.

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<sup>16</sup> “Payment system electronics” denotes a circuit board designed to receive signals from a payment acceptance device and to display payment amount, selected settings, and cycle status. Such electronics also capture cycles and payment history and provide for transmission to a reader.

<sup>17</sup> A “security fastener” is a screw with a non-standard head that requires a non-standard driver. Examples include those with a pin in the center of the head as a “center pin reject” feature to prevent standard Allen wrenches or Torx drivers from working.

<sup>18</sup> “Normal operation” refers to the operating mode(s) available to end users (*i.e.*, not a mode designed for testing or repair by a technician).

## Legal Framework

In accordance with section 751(c)(1) of the Act, Commerce is conducting this sunset review to determine whether revocation of the *Order* would be likely to lead to a continuation or recurrence of dumping. Sections 752(c)(1)(A) and (B) of the Act provide that, in making this determination, Commerce shall consider both the weighted-average dumping margins determined in the investigation and subsequent reviews, and the volume of imports of the subject merchandise for the periods before and the periods after the issuance of the antidumping duty order.

In accordance with the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act, specifically the Statement of Administrative Action (SAA),<sup>19</sup> the House Report,<sup>20</sup> and the Senate Report,<sup>21</sup> Commerce's determinations of likelihood will be made on an order-wide, rather than a company-specific, basis.<sup>22</sup> In addition, Commerce normally determines that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping when: (a) dumping continued at any level above *de minimis* after the issuance of the order; (b) imports of the subject merchandise ceased after the issuance of the order; or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.<sup>23</sup> Alternatively, Commerce normally will determine that revocation of an antidumping duty order is not likely to lead to continuation or recurrence of dumping where dumping was eliminated after issuance of the order and import volumes remained steady or increased.<sup>24</sup>

Furthermore, as a base period of import volume comparison, it is Commerce's practice to use the one-year period immediately preceding the initiation of the investigation, rather than the level of pre-order import volumes, as the initiation of the investigation may dampen import volumes and, thus, skew the comparison.<sup>25</sup>

In addition, section 752(c)(3) of the Act states that the magnitude of the margin of dumping that is likely to prevail if the order were revoked shall be provided by Commerce to the ITC. Generally, Commerce selects the weighted-average dumping margins from the final determination in the original investigation, as these rates are the only calculated rates that reflect the behavior of exporters without the discipline of an order in place.<sup>26</sup> In certain circumstances, however, a more recently calculated rate may be more appropriate (*e.g.*, "if dumping margins

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<sup>19</sup> See H.R. Doc. 103-316, vol. 1 (1994) (SAA).

<sup>20</sup> See H. Rep. No. 103-826, pt. 1 (1994) (House Report).

<sup>21</sup> See S. Rep. No. 103-412 (1994) (Senate Report).

<sup>22</sup> See SAA at 879; *see also* House Report at 56.

<sup>23</sup> See SAA at 889-890; House Report at 63-64; Senate Report at 52; and *Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871, 18872 (April 16, 1998) (*Sunset Policy Bulletin*).

<sup>24</sup> See SAA at 889-890; *see also* House Report at 63.

<sup>25</sup> See *Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order*, 72 FR 56985 (October 5, 2007), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

<sup>26</sup> See SAA at 890 and *Persulfates from the People's Republic of China: Notice of Final Results of Expedited Second Sunset Review of Antidumping Duty Order*, 73 FR 11868 (March 5, 2008), and accompanying IDM at Comment 2.

have declined over the life of an order and imports have remained steady or increased, {Commerce} may conclude that exporters are likely to continue dumping at the lower rates found in a more recent review”).<sup>27</sup> Finally, pursuant to section 752(c)(4)(A) of the Act, a margin of dumping likely to prevail of “zero or *de minimis* shall not by itself require” Commerce to determine that revocation of an AD order would not be likely to lead to a continuation or recurrence of sales at LTFV.<sup>28</sup>

Regarding the margin of dumping likely to prevail, in the *Final Modification for Reviews*, Commerce announced that in five-year (*i.e.*, sunset) reviews, it will not rely on weighted-average dumping margins that were calculated using the zeroing methodology.<sup>29</sup> However, Commerce explained in the *Final Modification for Reviews* that it “retain{s} the discretion, on a case-by-case basis, to apply an alternative methodology, when appropriate” in both investigations and administrative reviews pursuant to section 777A(d)(1)(B) of the Act.<sup>30</sup> In the *Final Modification for Reviews*, Commerce stated that “only in the most extraordinary circumstances” would it rely on margins other than those calculated and published in prior determinations.<sup>31</sup> Commerce further stated that, apart from the “most extraordinary circumstances,” it would “limit its reliance to margins determined or applied during the five-year sunset period that were not determined in a manner found to be WTO-inconsistent” and that it “may also rely on past dumping margins recalculated pursuant to Section 129 proceedings, dumping margins determined based on the use of total adverse facts available (AFA), and dumping margins where no offsets were denied because all comparison results were positive.”<sup>32</sup>

## Discussion of the Issues

Below we address the comments of the interested party.

### 1. Likelihood of Continuation or Recurrence of Dumping

#### Interested Party Comments<sup>33</sup>

Whirlpool argues that revocation of the *Order* would likely lead to a continuation or recurrence of dumping of large residential washers from Mexico and would also result in significant increases in the volume of dumped imports, as Mexican producers would not be subject to the discipline of the *Order*. Citing to the history of the *Order*, Whirlpool argues that the results of each of the administrative reviews demonstrate that dumping has continued at above *de minimis* levels over the life of the *Order*. Whirlpool argues that this, by itself, is a sufficient basis for

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<sup>27</sup> See SAA at 890-91.

<sup>28</sup> See *Folding Gift Boxes from the People’s Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order*, 72 FR 16765 (April 5, 2007), and accompanying IDM at Comment 1.

<sup>29</sup> See *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012) (*Final Modification for Reviews*).

<sup>30</sup> *Id.* at 8102, 8105, 8109.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> See Whirlpool Substantive Response at 5 – 9.

Commerce to conclude that dumping is likely to continue or recur if the *Order* were revoked.

Whirlpool also claims that the post-*Order* decrease in import volumes and the relatively steady volume of imports since the imposition of the *Order*<sup>34</sup> also support a determination that dumping is likely to recur. Whirlpool notes that much of the decrease in imports is likely attributable to the fact that two Mexican producers ceased exporting from Mexico, but notes that a significant volume of subject merchandise continues to enter the United States at dumped prices.

In conclusion, Whirlpool argues that continuation of the antidumping duty *Order* is necessary because Mexican producers would likely continue or resume selling subject large residential washers into the United States at less than fair value without the discipline of the *Order*.

#### Commerce's Position:

As explained in the Legal Framework section above, Commerce's determinations of likelihood will be made on an order-wide basis.<sup>35</sup> In addition, Commerce normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly.<sup>36</sup> In addition, pursuant to section 752(c)(1)(B) of the Act, Commerce considers the volume of imports of the subject merchandise for the period before and after the issuance of the antidumping duty order.

As noted in the "History of the Order" section above, Commerce found dumping at above *de minimis* levels in the underlying antidumping duty investigation. Commerce relied on the margin presented in the petition for two respondents because they chose not to participate. Further, in each of the administrative reviews conducted, Commerce continued to find above *de minimis* dumping margins and, in the most recently completed administrative review, Commerce relied on the dumping margin presented in the petition. These margins from the reviews provide the best evidence of dumping behavior of these companies and there is no evidence that indicates dumping has ceased. Additionally, we examined the statistics placed on the record by Whirlpool with respect to imports of the subject merchandise for the period before and after the issuance of the *Order*, pursuant to section 752(c)(1)(B) of the Act. These data show that import volumes after the imposition of the *Order* were significantly below the volume of imports in the year preceding the initiation of the investigation (*i.e.*, 2011). Further, these data indicate that import volumes have remained at levels well below pre-*Order* volumes over the sunset period (*i.e.*, 2013-2017). Given the continued existence of above *de minimis* margins calculated without zeroing since imposition of the *Order* and the overall decrease in the volume of exports, we determine that it is unlikely that Mexican producers of subject merchandise would be able to sell

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<sup>34</sup> *Id.* at 9 (citing to import statistics compiled from tariff and trade data from the U.S. Department of Commerce).

<sup>35</sup> See SAA at 879; House Report at 56.

<sup>36</sup> See SAA at 889-890; House Report at 63-64; Senate Report at 52.

at pre-*Order* volumes without dumping.<sup>37</sup> Further, the combination of above *de minimis* margins and decreasing import volumes reasonably indicates that dumping is likely to continue or recur as the exporters likely need to dump to sell at pre-order volumes. Therefore, pursuant to section 752(c)(1) of the Act, we determine revocation of the *Order* would likely result in the continuation of dumping in the United States due to the continued existence of dumping margins since the issuance of the *Order*.<sup>38</sup>

## 2. Magnitude of the Dumping Margins Likely to Prevail

### Interested Party Comments<sup>39</sup>

Whirlpool notes that Commerce applied an adverse inference to find that duty absorption exists on all U.S. sales of the subject merchandise exported by Electrolux and argues that the *Policy Bulletin* provides that duty absorption is a strong indicator that the current dumping margins calculated in reviews may not be indicative of the margins that would exist in the absence of an order. Whirlpool recognizes that it is Commerce's policy to report the margins of dumping determined in the original investigation. However, Whirlpool argues that since Electrolux did not cooperate in the fourth administrative review, Commerce should report to the ITC the adverse facts available rate applied to Electrolux.

### Commerce's Position:

Section 752(c)(3) of the Act provides that Commerce shall provide to the ITC the magnitude of the margin of dumping that is likely to prevail if the *Order* were revoked. Commerce's preference is to select a rate from the investigation, because it is the only calculated rate that reflects the behavior of manufacturers, producers, and exporters without the discipline of an order in place.<sup>40</sup> However, Commerce may provide a more recently calculated margin for a particular company, where declining (or zero or *de minimis*) dumping margins are accompanied by steady or increasing imports, which would reflect that the exporter is likely to dump at a lower rate found in a more recent review. Similarly, if an exporter chooses to increase dumping to increase or maintain market share, Commerce may provide the ITC with an increased margin that is more representative of that exporter's behavior in the absence of an order.<sup>41</sup> As indicated in the Legal Framework section above, Commerce's current practice is to not rely on weighted-average dumping margins calculated using the zeroing methodology found to be WTO-inconsistent, in accordance with the *Final Modification for Reviews*.<sup>42</sup>

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<sup>37</sup> See SAA at 889 (explaining that "declining import volume accompanied by the continued existence of dumping margins after the issuance of an order may provide a strong indication that, absent an order, dumping would be likely to continue, because the evidence would indicate that the exporter needs to dump to sell at pre-order volumes").

<sup>38</sup> See SAA at 890 (explaining that "{i}f companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were removed").

<sup>39</sup> See Whirlpool Substantive Response at 10 – 12.

<sup>40</sup> See SAA at 890; and Sunset Policy, 63 FR at 18873 (section II.B.1); see also, e.g., *Prestressed Concrete Steel Wire Strand from the People's Republic of China: Final Results of Expedited Sunset Review of the Antidumping Duty Order*, 80 FR 43063 (July 21, 2015), and accompanying Issues and Decision Memorandum at Issue 2.

<sup>41</sup> See Section 752(c)(3) of the Act.

<sup>42</sup> See *Final Modification for Reviews*, 77 FR at 8103.

As noted in the “History of the Order” section above, and under Issue 1, Commerce relied on adverse facts available in assigning a margin to two respondents in the underlying investigation. This rate was based on the petition, and did not involve the practice of zeroing found to be WTO-inconsistent and subject to the *Final Modification for Reviews*. Thus, we determine that revocation of the *Order* would be likely lead to continuation or recurrence of dumping at the magnitude of weighted-average margins up to 72.41 percent.

Final Results of Review

Commerce determines that revocation of the antidumping duty order on large residential washers from Mexico would be likely to lead to the continuation or recurrence of dumping, and that the magnitude of the margins of dumping that are likely to prevail would be at a rate up to 72.41 percent.

Recommendation

Based on our analysis of the responses received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish these final results of this expedited sunset review in the *Federal Register*.

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Agree

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Disagree

5/4/2018

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Signed by: GARY TAVERMAN

Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance